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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re ANDREW R., a Minor.

SANDEE J.,

Petitioner,

v.

THE SUPERIOR COURT OF THE STATE  
OF CALIFORNIA FOR THE COUNTY OF  
LOS ANGELES,

Respondent.

LOS ANGELES COUNTY DEPARTMENT  
OF CHILDREN AND FAMILY SERVICES  
et al.,

Real Parties in Interest.

B197030

(Los Angeles County  
Super. Ct. No. CK54776)

ORIGINAL PROCEEDING; petition for writ of mandate. Sherri Sobel,  
Temporary Judge. (Pursuant to Cal. Const. art. VI, § 21.) Petition denied.

Law Offices of Alex Iglesias and Pamela Rae Tripp for Petitioner.

No appearance for Respondent.

Raymond G. Fortner, Jr., County Counsel, Liana Serobian, Deputy County  
Counsel for Real Party in Interest Los Angeles County Department of Children and  
Family Services.

Children's Law Center of Los Angeles and Sophia Ali for Real Party in Interest  
Andrew R.

Petitioner Sandee J. seeks extraordinary writ relief (Welf. & Inst. Code., § 366.26, subd. (l);<sup>1</sup> Cal. Rules of Court, rule 8.452) from the juvenile court's order, made at the dispositional hearing after the court denied reunification services, setting a hearing pursuant to section 366.26 to consider termination of parental rights and implementation of a permanent plan for her nine-month-old son Andrew R. Sandee J.'s petition is opposed by the Department of Children and Family Services (Department) and also by Andrew, who has filed a joinder in the Department's response. We deny the petition, finding no merit in Sandee J.'s contention the juvenile court erred in denying reunification services.

## **FACTUAL AND PROCEDURAL BACKGROUND**

### *1. The Detention of Andrew*

On September 26, 2006, shortly after his birth, the Department filed a petition under section 300 to declare Andrew a dependent child of the juvenile court. The petition alleged (inter alia) Sandee J. had a history of engaging in domestic violence with Andrew's father (David R.), a history of drug abuse including methamphetamine, and a criminal history including several drug related convictions. The petition further alleged two older siblings of Andrew (Joshua J. and Ashleigh J.) had been removed from Sandee J. and Sandee J. had failed to reunify with those children.

In its report for the detention hearing, the Department advised that Sandee J. and Andrew were homeless and living in various motels or in a tool shed behind a relative's home. When she was interviewed by the social worker, Sandee J. admitted she had a criminal history, a history of drug abuse, and a history of domestic violence with David R. Sandee J. agreed to take a drug test, but she did not appear and later explained that she was afraid she would test positive because she was using methamphetamine. Sandee J. also agreed to enroll in a drug treatment program, but did not appear for her intake appointment. The Department further reported that Sandee J. had failed to reunify

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

with Joshua and Ashleigh, her parental rights to Joshua and Ashleigh had been terminated, and she had an extensive criminal history dating back to 1997 with convictions of drug offenses and violent crimes including assault with a deadly weapon and exhibiting a deadly weapon.

On September 26, 2006 the court ordered Andrew detained and placed in foster care with reunification services and monitored visitation for Sandee J. and David R. The court advised Sandee J. and David R. that it may elect to proceed directly to permanency planning without reunification services, appointed an expert (Dr. Timothy Collister) to conduct a psychiatric examination of Sandee J. and David R. (Evid. Code, § 730), and set the matter for the jurisdiction hearing.

## *2. The Jurisdiction Hearing*

In its report for the jurisdiction hearing the Department stated that Sandee J. had admitted to having a long history of drug abuse, starting with marijuana at age nine and culminating with daily use of methamphetamine beginning when she was fifteen. Sandee J. told the social worker she had used methamphetamine recently, after Andrew was detained. Sandee J. also admitted there was physical violence in her relationship with David R., but stated that she was not the aggressor. The Department recommended the court deny reunification services to Sandee J. for her failure to reunify with Andrew's older siblings.

On October 18, 2006 the court advised Sandee J. that the Department sought an order denying her reunification services, and the jurisdiction hearing was continued to January 11, 2007 for a contest. On January 11 Sandee J. waived her rights and submitted to the petition on the basis of the Department's reports. (See *In re Malinda J.* (1990) 51 Cal.3d 368.) The court sustained the Department's dependency petition, received into evidence Dr. Collister's report of his Evidence Code section 730 evaluation, and continued the disposition hearing to February 7, 2007 for a contest in view of the Department's recommendation of no reunification and to afford all counsel an opportunity to review Dr. Collister's report.

### *3. Dr. Collister's Report*

Dr. Collister reported that Sandee J. and David R. appeared for their initial appointment but left when they were told the process would take some time, stating that David R. had to go to work. They arrived an hour and a half late for the rescheduled appointment, explaining that they had traveled from Las Vegas. When asked if she knew why she was being evaluated, Sandee J. told Dr. Collister she had no idea, but perhaps it was because she “got mad in court” and “yelled at the judge” when the court ordered Sandee J. and David R. to visit Andrew separately. Sandee J. attributed the Department’s involvement in her life to a false accusation that she was living in a drug house, or maybe because she missed an appointment “to go to some counseling thing.” She initially told Dr. Collister she had last used drugs “two or three years ago,” then said she had more recently used drugs “a little bit here and there,” and finally stated that she had used methamphetamine “right after they took [Andrew].” Sandee J. told Dr. Collister she used “eight lines” of methamphetamine “whenever she felt the need” in 2004 when Joshua was six months old, Joshua was removed from her care for her drug use, and she did not comply with court orders for counseling, drug treatment and parenting classes because she “wasn’t in the state of mind to do that.” Sandee J. added that she also failed to comply with orders for treatment and counseling when Ashleigh was removed in 2005, again because she wasn’t “in the state of mind” to comply and she “figured Ashleigh was in a better place.” Sandee J. denied that there had ever been an episode of domestic violence in her relationship with David R. Dr. Collister was able to perform some psychological testing on Sandee J., but testing could not be completed because she and David R. told Dr. Collister they wanted to have a brief discussion in the waiting room, but they left the premises without informing the staff and did not return. Dr. Collister concluded, from the results he obtained, that Sandee J. had little insight into the reality of her life; was entrenched in significant denial of what had occurred in her life previously and recently; had very slight appreciation of her drug dependence; and suffered generally from substantial repression and denial. Dr. Collister opined that “it remains conceivably

possible that [Sandee J.] might benefit from therapy, but . . . the prognosis is low,” there was a relatively high risk that she would continue to use drugs, and her failure to acknowledge her domestic violence issues also made a favorable change very unlikely.

#### *4. The Contested Disposition Hearing*

The contested hearing commenced on February 9, 2007. Counsel for the Department stated that he sought an order denying reunification to Sandee J. and David R. pursuant to section 361.5, subdivisions (b)(10), (b)(11), and (b)(13), and the court explained that it was the parents’ burden to show by clear and convincing evidence that reunification would be in Andrew’s best interest.

The Department’s social worker testified that Sandee J. had recently begun to participate in programs and visit Andrew and had submitted negative drug tests, but had not completed any drug or domestic violence program. A pastor (Salinas) who had provided counseling of various sorts to Sandee J. and David R. testified both parents were making good progress in their programs. During cross-examination, Salinas was asked about his counseling credentials and testified he was “going towards getting [his] B.A.” but had no professional licensing for counseling of any sort. Salinas further testified that he was unfamiliar with the issues in the dependency case as documented by the Department, and had learned about the issues in the case only as presented by Sandee J. and David R.

When the hearing continued on February 13, Sandee J. testified she had been participating in counseling and treatment programs since October 12; had not participated in programs during the previous three years; had been sober for almost five months and was maintaining her sobriety through “God’s will”; and had failed to reunify with Joshua and Ashleigh. Sandee J. initially denied any domestic violence in her relationship with the father, but later admitted she once attempted to stab him with a screwdriver and another time attempted to strike him with a baseball bat. Sandee J. also testified that she left Dr. Collister’s office without completing the psychiatric evaluation, which she knew

was vital to determine whether she could be a parent to Andrew, and never telephoned to reschedule the appointment.

At the conclusion of testimony, the Department's counsel requested the court deny reunification to both parents and set the matter for a selection and implementation hearing pursuant to section 366.26. As to Sandee J., counsel cited her failure to reunify with Andrew's older siblings, her 13-year history of drug abuse, and her continued use of drugs evidencing resistance to prior court-ordered treatment. Andrew's counsel joined in the Department's request, stressing Sandee J.'s refusal to take advantage of the drug treatment programs offered to her over a period of several years. Sandee J.'s counsel requested the court grant reunification services, urging Sandee J. was participating in treatment programs and had acknowledged her drug problem.

After hearing argument, the court denied reunification services to Sandee J. (and also to David R.) pursuant to section 361.5, subdivisions (b)(10), (b)(11) and (b)(13), and set the matter for a hearing pursuant to section 366.26. The court explained that the evidence made clear Sandee J. had failed to make a reasonable effort to treat the problems that led to the removal of Andrew's siblings from her care, had a history of chronic use of drugs, and had failed to comply with court-ordered drug treatment programs on at least two prior occasions.<sup>2</sup> The court discounted the testimony of pastor Salinas, noting that "while a very nice man, [he] does not have a clue as to what's involved . . . ."

## **DISCUSSION**

### *1. The No-Reunification Statutes*

Recognizing that in certain categories of cases it is futile to provide reunification

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<sup>2</sup> Counsel for Sandee J. interrupted to point out that the Department had not indicated, in its report for the dispositional hearing, it would seek an order of no reunification services for failure to comply with drug treatment programs. (§ 361.5, subd. (b)(13).) The court pointed out that it was clear from the commencement of the hearing that subdivision (b)(13) was applicable.

services, the Legislature has enacted provisions for “fast-track” permanency planning under specified circumstances. (See *Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750-751; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 70-71.) One such situation is when reunification with a sibling has failed previously and the parent has not made a reasonable effort to treat the problems that led to the sibling’s removal from the parent’s custody. (§ 361.5, subd. (b)(10) [reunification services for sibling terminated; parent has not subsequently made reasonable efforts to treat problem that led to child’s removal], (11) [parental rights over sibling terminated; parent has not subsequently made reasonable efforts to treat problem that led to child’s removal].) Section 361.5, subdivision (b)(10) and (11) addresses the problem of recidivism by a parent despite reunification services by positing that a parent who has failed in one course of reunification is unlikely to succeed with a new round of services. (See *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478.) A second situation calling for “fast-track” permanency planning is when a parent has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for the problem during a three-year period immediately prior to the filing of the dependency petition, or has failed to comply with a court-ordered drug or alcohol treatment program on at least two prior occasions. (§ 361.5, subd. (b)(13).) When a case falls within any of these provisions, “the general rule favoring reunification is replaced by a legislative assumption that offering services would be an unwise use of governmental resources” (*In re Baby Boy H, supra*, at p. 478); and the juvenile court lacks power to order reunification unless it finds, by clear and convincing evidence, that reunification is in the child’s best interest. (§ 361.5, subd. (c), 2d par.)

2. *Sandee J. Did not Make a Reasonable Effort to Treat the Problems that Led to the Removal of Andrew’s Siblings*

Substantial evidence in the record supports the juvenile court’s finding that Sandee J. did not make a reasonable effort to treat the problems that led to the removal of Andrew’s older siblings from her custody. (§ 361.5, subd. (b)(10), (11).) Joshua and Ashleigh were removed from Sandee J.’s care for her abuse of drugs, she failed to reunify

with them, and her parental rights over them were terminated. After losing Joshua and Ashleigh to the dependency system Sandee J. continued to use methamphetamine on a weekly basis. She admitted to using methamphetamine even after Andrew's birth, continued to deny having a drug problem, did not cooperate with the psychiatric evaluation process, eventually enrolled in an outpatient program of doubtful value and late in the process, and continued to demonstrate almost total denial of her chronic and serious drug abuse problem.

*3. The Court Properly Found That Sandee J. Failed to Comply With a Drug Treatment Program on at Least Two Prior Occasions*

Pursuant to subdivision (b)(13) of section 361.5, reunification services may be denied when a parent has a history of extensive, abusive, and chronic use of drugs and has failed to comply with a court-ordered program of drug treatment on at least two prior occasions, even though the programs were available and accessible. Sandee J. did not claim in the juvenile court, nor does she claim in the instant proceeding, that she did not fail to comply with drug treatment programs on at least two prior occasions, and the record contains ample evidence of her failure to so comply with various such programs in the dependency proceedings involving Joshua and Ashleigh.<sup>3</sup> Rather, Sandee J.'s claim is that she was denied her due process right to notice when the Department's report for the disposition hearing failed to cite section 361.5, subdivision (b)(13) as a basis for denial of reunification services. We reject this contention by Sandee J., as the record, as we have set forth, shows that she received notice of the Department's intention to rely on this provision at the commencement of the disposition hearing and makes no showing, or even claim, that the absence of other notice deprived her of an opportunity to object to denial of reunification on the basis of subdivision (b)(13). In any case any defect in

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<sup>3</sup> Sandee's claim that as of the disposition hearing she had been participating in treatment "for nearly five months, with successful results," does not address the provision in section 361.5, subdivision (b)(13) addressing failure to comply with treatment programs on prior occasions.



notice was harmless beyond a reasonable doubt (see, e.g., *In re Angela C.* (2002) 99 Cal.App.4th 389, 394-395) in light of the court's proper denial of reunification under subdivision (b)(10) and (11) and the undisputed evidence of Sandee J.'s failure to comply with treatment programs on at least two prior occasions.

#### 4. *Reunification Is Not in Andrew's Best Interest*

Sandee J. presented no evidence in the juvenile court to show reunification was in Andrew's best interest, nor does she suggest in this writ proceeding she satisfied her burden of proving by clear and convincing evidence reunification with Andrew would be in his best interest.<sup>4</sup> In any case, there is ample support for the juvenile court's conclusion providing reunification services to Sandee J. would not be in Andrew's best interest. The record, as we have set forth, shows that, as of the date of the disposition hearing, Sandee J. had not resolved her 13-year drug problem; was in denial of her drug problem and of her ongoing domestic violence issues with David R.; and had formed no bond with Andrew. Under these circumstances, any further delay in the implementation of a permanent plan would clearly be detrimental to Andrew, who has a fundamental right to stability and permanence. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 307; *In re Jasmon O.* (1994) 8 Cal.4th 398, 419.)

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<sup>4</sup> "The 'clear and convincing evidence' test requires a finding of high probability, based on evidence 'so clear as to leave no substantial doubt' [and] 'sufficiently strong to command the unhesitating assent of every reasonable mind.'" (*Conservatorship of Wendland* (2001) 26 Cal.4th 519, 552, quoting *In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

## **DISPOSITION**

The petition is denied on the merits.

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**WOODS, J.**

**We concur:**

**PERLUSS, P. J.**

**ZELON, J.**